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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/498,261	02/03/2000	Nicholas J. Mankovich	US000036	8558

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER	
ABDI, KAMBIZ	

ART UNIT	PAPER NUMBER
3621	

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/498,261	MANKOVICH ET AL.	
	Examiner	Art Unit	
	Kambiz Abdi	3621	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

JAMES P. TRAMMELL
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Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues that the Chen 737 reference does not teach or suggest an identifier is used to place an order for a content or product. The examiner disagrees. Chen 737 reference clearly discloses that a content identification process takes place to extract sub carrier information (RBDS/RDS) related to the broadcast and such extracted identification information is used to make a purchase order (See Chen column 3, lines 21-23, column 4, lines 54-60, and column 5, line 56- column 6, line 6). To one skilled in the art it would be clear that the identification of the content is the minimum of information needed to identified an item of interest to be purchased. Therefore, the teaching s of the Chen 737 reference as " RBDS/RDS signals... and ancillary television band signals, which can be used to cause the consumer transmitter to identify for the consumer's convenience the music being played on the radio or to identify other broadcast information." It is clearly taught by Chen 737 reference that this all takes place in the consumer transmitter and the transmitter is capable of storing and recalling information corresponding to the broadcast (See Chen column 5, lines 49-51).

Additionally applicant argues that the Examiner has not presented a prima facie case since none of the applied prior art references either singly or in combination teach the claimed invention. The Examiner disagrees. In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references, In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that motivation to make the modification be expressly articulated. Although, Examiner has provided ample reason and the motivation to combine that would be clear to one of ordinary skill in the art at the time of the invention. The test for combining references is what the combination of disclosure taken, as a whole would suggest to one of ordinary skill in the art, In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed and skilled in the art, rather than by their specific disclosures, In re Bozek, 163 USPQ 545 (CCPA 1969). In this case, there is clear evidence that an "item identifier" is utilized to place a purchase order based on the extraction of such identification from a broadcast. It is clearly demonstrated by the Chen 737 reference that a purchase order can be placed based on identification of an instant of a broadcast and information related to such broadcast such as and identifier.

Therefore, Applicant's arguments are none persuasive and the rejection of claims 1-5, 7-10, 15, and 17-20 are maintained.